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Promotion and protection of human rights

United Nations reform: measures and proposals

Letter dated 21 September 2012 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a position paper on the approaches of the Russian Federation to enhancing the human rights treaty bodies (see annex).

I should be grateful if you would have the present letter and its annex issued as a document of the sixty-seventh session of the General Assembly under agenda items 69 and 119.

(*Signed*) Vitaly **Churkin**

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Annex to the letter dated 14 September 2012 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

Approaches of the Russian Federation to enhancing the human rights treaty bodies

(position paper)

1. The Russian Federation attaches great importance to the strengthening of the human rights treaty body system, which it considers one of the key elements of the international system for the promotion and protection of human rights.

2. Despite the undeniable success achieved by these monitoring bodies, they are showing signs of a systemic crisis in their functioning owing in part to the growing number of States parties to the international human rights treaties, which has resulted in an unavoidable increase in the workload of the treaty bodies. That has a led to a situation in which the committees are in fact no longer able to consider periodic reports and communications in a timely manner. Moreover, the treaty bodies themselves often face justified criticism for overstepping their mandates, including through expansive interpretation of the human rights and freedoms guaranteed by the conventions and the related obligations of States parties.

3. The Russian Federation welcomes all efforts aimed at enhancing the effectiveness of the treaty committees. In that connection, the Russian Federation views in a positive light the multilateral process of "reflection" on the strengthening of the treaty bodies launched by the United Nations High Commissioner for Human Rights in 2009, which culminated with the publication of a report on the results (A/66/860) in June 2012.

4. However, until recently the only format for consideration of the issue that had not been utilized was an intergovernmental discussion of the work of the human rights treaty bodies involving all States Members of the United Nations without exception. Therefore, on 23 February 2012, the General Assembly adopted resolution 66/254, sponsored by the Russian Federation, on an intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system. This initiative stemmed from a concern on the part of the Russian Federation about the future of the human rights treaty bodies and the need to channel the multiple and uncoordinated discussions under way into an intergovernmental discussion under the aegis of the General Assembly. In this regard, the Russian Federation considers it necessary to adhere strictly to the intergovernmental nature of the negotiation process launched within the framework of the General Assembly, in accordance with the parameters for participation set out in paragraphs 4 and 6 of resolution 66/254.

5. It is the understanding of the Russian Federation that the mandate of the General Assembly under the Charter of the United Nations empowers it to discuss any matter relating to the activities of the treaty bodies. Some of those bodies may take decisions independently, while others must make recommendations either to the meetings of States parties to the respective treaties or to the treaty committees themselves. The Russian Federation is also of the view that the process of enhancing the treaty bodies must take place within the existing framework of international law

on the promotion and protection of human rights without any amendment of the texts of international human rights treaties.

6. The principal aim of the process, in our view, is to strengthen the capacity of the human rights treaty bodies to assist States parties in complying with their human rights obligations.

7. The views of the Russian Federation on the practical functioning of the human rights treaty body system are set out below.

Preparation of national periodic reports

8. At this stage, it is advisable to maintain the existing procedure for the preparation of periodic reports by States on compliance with their obligations under international treaties for the promotion and protection of human rights.

9. The so-called alternative procedure for the preparation of reports, whereby States parties to a treaty do not submit "full" reports but merely answer questions transmitted in advance by the treaty bodies, is currently being tested and the modalities have not been finalized. Nevertheless, some shortcomings of this procedure have already become evident:

- An excessive number of questions posed by the committees, requiring States to exceed substantially the recommended length for answers in order to provide detailed and objective information;
- The misuse of general theoretical questions by the treaty bodies, preventing States from providing concise answers that are also as complete as possible;
- The formulation of questions that go beyond what is set forth in the respective international treaties, resulting in encroachment on the competence of other treaty bodies.

10. Before extending this practice to all treaty bodies, it is necessary to await the initial results of the alternative procedure (once it has been in use for at least two or three years) and to conduct a comprehensive assessment of its effectiveness. At the current stage, this procedure should continue to be optional and should meet the following conditions:

- The procedure may be used only with the consent of the State party concerned;
- The questions to be answered by the State party must not go beyond what is set forth in the respective international treaties;
- Questions of a factual nature must be based on reliable information that has been verified several times;
- The number of questions to be answered by the State party should be limited in order to channel the discussion into a constructive process.

11. It is inadvisable to standardize the methodology and modalities used by States parties in preparing their periodic reports. This matter is not addressed by the international human rights treaties and is within the sole purview of the States parties. Taking into consideration their institutional, political, social, economic, cultural, religious and other characteristics, States themselves decide whether any national consultations are feasible or necessary and whether civil society institutions

and national human rights mechanisms should be involved in the preparation of the report.

12. For the same reason, it is unacceptable to require States parties to establish mandatory national ad hoc coordination mechanisms for the preparation of periodic reports. Such additional requirements may be placed on States only through amendments to the texts of the respective international treaties.

13. Merely placing a limit on the length of periodic reports might adversely affect the quality of the information being presented, the dialogue between States parties and treaty bodies and the content of the concluding observations on the reports. Such a step would be warranted only under the following conditions:

- Information on national legislation, statistical data and other items of a general nature should be included in an annex to the national report in order to ensure that the report itself is concise and focuses on the most important steps taken by States parties to comply with their international obligations under the relevant treaty;
- All annexes to national reports should be translated into the working languages of the treaty bodies in order to ensure that committee experts receive full and objective information on steps taken by States parties;
- A limit should be placed on the quantity of additional information that may be requested from a State party by the treaty bodies just prior to the presentation of its national report;
- Additional questions from the committees, which should be aimed solely at clarifying specific information contained in the national report of the State party, should be as clear and concise as possible;
- The principle of "division of labour" among the treaty bodies should be strictly observed and no questions should be posed that lie outside the competence of the committee concerned and the provisions of the respective international treaty.

14. Under the core international human rights treaties, States parties are required to submit periodically national reports on their compliance with the relevant international obligations for the promotion and protection of human rights. Normally, the first national report contains the key information comprising the core document. Subsequent periodic reports merely update this information, so that the treaty body always has available to it updated information on a given State party.

15. The Russian Federation holds the view that making it obligatory for States parties to update the core document periodically (including with respect to new legislation, policies and institutions) will not only require States parties to find additional resources (for the preparation and submission of the core document) and entail additional budgetary expenditure by the United Nations for translation and publication but will also violate the respective treaties, which do not include such a provision.

16. The best way to update the core document would be for the treaty body to incorporate the updated information from the periodic reports into the core document with the consent of the State party. This process would be editorial in

nature and would not place additional obligations on States parties, which can be done only through appropriate amendments to the international treaties.

17. Experience has shown that the main reason why States fail to submit periodic reports or submit them late and also why they fail to send national delegations to present their reports is not because States are unaware of their international obligations but because they lack the necessary capacity, including logistical resources, to fulfil them properly. In that connection, the Russian Federation considers that one way to enhance the functioning of the treaty bodies should be through broader implementation of the technical assistance programme to build the relevant capacities of States parties.

Consideration of national periodic reports

18. The idea of developing a master calendar requires further in-depth examination.

19. While this would appear to be an attractive proposal, it has a number of shortcomings. The main drawback is that it would undermine the basic principle underpinning the work of the treaty bodies. The main purpose of the treaty committees is to engage in constructive dialogue with States parties and assist them in complying with their obligations under each particular treaty. The adoption of a master calendar could lead to a situation in which one of the committees might begin considering a State's implementation of the treaty in the absence not only of a national report but also of an official Government delegation.

20. The introduction of a master calendar will also place an additional burden on the least developed countries, for which the annual submission of even one report can become an overwhelming task.

21. It is not entirely clear how the notion of a master calendar will square with the provisions of the core international human rights treaties, which stipulate different periodicities for the submission of national reports. One option might be for the committees to agree with the States parties on lengthening the time limits for submission of national reports (for example, from four to six years) or combining two or three reports into one report with a longer time limit (similar to the practice followed by the Committee on the Elimination of Racial Discrimination, for example). This would ease the workload of the committees for a period of time and would not require increased expenditure either by States or by the United Nations.

22. The establishment of national delegations for the presentation of periodic reports is the exclusive prerogative of States parties. It is unacceptable to make any demands of States parties concerning the composition of national delegations or the inclusion of specific stakeholder representatives.

23. The Russian Federation considers that the practice of sending a State party a list of questions from the committee experts just prior to (that is, a few days before) the presentation of its national report could be one means of enhancing the effectiveness of the dialogue between States parties and the treaty bodies. In particular, the State could give short exhaustive answers to the committee's questions during the time allotted for that purpose. That would not only optimize the dialogue with the State party during the presentation of the national report but would also remove the requirement that it send additional written information, which in practice is rarely considered by the treaty body experts. This would

obviously benefit the treaty bodies as well, since they would have full information that would allow them to formulate more objective and informed concluding observations following the consideration of national reports.

24. The practice whereby treaty bodies appoint country rapporteurs requires serious adjustment and improvement. It is not uncommon for committee members who have relied on the appointed rapporteurs to be completely unaware of the contents of the documents submitted. As a result, delegations spend considerable time answering questions that have already been answered in the report itself. In that connection, the Human Rights Committee's practice of appointing a country task force merits attention.

25. The practice of the Committee on the Elimination of Discrimination against Women to consider several reports simultaneously in parallel chambers is not appropriate for other committees owing to the difference in the size of membership between that Committee and the other treaty bodies. Moreover, holding meetings in parallel chambers makes sense only on the condition that the membership of the treaty bodies is based on the principle of equal geographical representation. There must be a guarantee that a State's report will be considered by a committee chamber that is geographically balanced.

26. Clear time limits must be set for interventions by members of the treaty bodies during the dialogue with States parties. There is a widespread practice whereby the bulk of the time allotted for the presentation of reports is essentially monopolized by committee members. Consequently, delegations have little time to provide complete and detailed answers to the large number of questions from treaty body experts.

27. In order to enhance the transparency of the treaty bodies and to ensure their true independence, objectivity and impartiality, the practice of conducting "closed" meetings of committee experts and various stakeholders must cease. All events and meetings held through the treaty bodies should be open to representatives of all stakeholders.

28. It is not uncommon that a State party is unable, for objective reasons, to send a delegation to a committee meeting to present its national report. A solution in such a situation might be to institute a practice of conducting dialogue between the national delegation and the committee using modern information and communications technology (for example, by videoconference and webcasting of committee meetings). A State party would be permitted to use these arrangements for the presentation of its national report provided it had submitted the proper request to the committee and had the necessary technical capacity (or, in the absence of such capacity, if the Office of the United Nations High Commissioner for Human Rights, which serves as the secretariat for the treaty bodies, provided the necessary technical support).

29. With a view to ensuring true impartiality and openness in the functioning of the treaty bodies, modern information and communications technology (including webcasting) should also be used for dialogue between committees and other information sources (such as United Nations system entities, national human rights mechanisms and civil society institutions) in the run-up to the presentation of national reports.

30. It will be feasible to end the preparation of summary records of committee meetings only if the use of modern information and communications technology is incorporated into the work of the treaty bodies and an open and well protected database of audio and video webcasts of all committee meetings is established.

31. The multilingual nature of the treaty bodies must be maintained. Reducing the number of languages in which States parties may submit or present their national reports will make it necessary for them to find additional resources for the translation of their materials.

32. Guidelines should be drawn up for the conduct of dialogue between the treaty bodies and States parties during the consideration of their periodic reports. Such a document should be developed jointly by States parties and the treaty bodies and should address only procedural aspects of the presentation of reports.

33. As they enhance their functioning and introduce new working methods, the treaty bodies should not under any circumstances establish further obligations for States other than those they undertook upon signing, ratifying or acceding to the international human rights treaties.

Concluding observations of the treaty bodies and their implementation

34. The Russian Federation maintains that the treaty bodies should draft shorter and more focused concluding observations following the consideration of periodic reports. The observations and recommendations should be realistic and pragmatic and should also take into account the actual capacities and needs of States parties.

35. The methodology and modalities to be used by States parties in implementing the treaty bodies' concluding observations are not stipulated by the respective international treaties. Such matters fall exclusively within the competence of the States parties. Taking into consideration their current institutional, political, social, economic, cultural, religious and other characteristics, countries independently determine whether they have a need and the capacity to adopt plans of action for the implementation of the concluding observations, propose new legislation or conduct national consultations; they also decide whether civil society institutions should be included in that process and whether an ad hoc coordinating mechanism should be established.

36. The international treaties in effect do not contain any provisions concerning what is known as the follow-up to the consideration of national reports. Any State party that is willing to engage in dialogue with the treaty bodies on this matter does so purely on a voluntary basis. The treaty bodies themselves and the Office of the United Nations High Commissioner for Human Rights may provide technical assistance only if so requested by the Government concerned.

37. The international human rights treaties do not provide for the conduct of country visits by the treaty bodies as part of the follow-up to the consideration of national reports. Committees may be granted that authority only through appropriate amendments to the international treaties or additional instruments (optional protocols) to that effect. Furthermore, that will place an additional burden (including a financial burden) on the treaty bodies and will adversely affect the discharge of their primary function: considering the national periodic reports of States parties.

38. Granting such authority to the committees would run counter to the very nature of the treaty bodies, whose purpose is to assist States in the implementation of their international human rights obligations, not to engage in monitoring and oversight.

39. The treaty bodies periodically assess the implementation of concluding observations by the States parties during the consideration of their national reports. The international treaties in effect do not set forth any procedure for interim reporting by States parties. The submission of interim reports on the implementation of concluding observations is a right, not an obligation, of States parties. Any institutionalization of an interim reporting process would be possible only through appropriate amendments to the international treaties or additional instruments (optional protocols) to that effect.

Procedure for the consideration of individual communications

40. Owing to the nature of the treaty bodies, the decisions they adopt on individual communications are not legally binding and serve only as recommendations. Materials relating to a communication and its consideration may be published or otherwise disclosed only with the mutual consent of the State party and the author of the communication. Failure to respect that condition constitutes a violation of the individual's right to privacy.

41. The gathering and archiving of information containing a citizen's personal details are governed by the relevant legislation of the State party. In that connection, discussions concerning the format and modalities of gathering and archiving information on individual communications should be guided by the confidential nature of that information. Moreover, the consent of the author and the State party is required to authorize the archiving and processing of that type of sensitive information.

42. The Russian Federation considers it inadvisable to establish a single open database of decisions of the treaty bodies on individual communications. Such a step would undermine the confidential nature of the proceedings as stipulated in the respective international treaties. For States parties, that very confidentiality is one of the most attractive features of such proceedings. Abandoning that principle could have an adverse effect on the goal of achieving the universality of the core international human rights treaties.

43. The Russian Federation holds the view that it would not be advisable to set up a joint inter-committee working group on communications. Such a move would not only run counter to the provisions of existing international treaties, but would also undermine the optional nature of the procedure for consideration of individual communications vis-à-vis the treaty bodies' primary duties, which are to consider national periodic reports, collaborate constructively with States parties and support them as they implement their international obligations.

44. Under international treaties and optional protocols governing procedures for individual communications, after a certain period of time has elapsed (generally, six months) following a decision by the committee, a State party must inform the treaty body of relevant measures taken. In that context, the Russian Federation finds that the consideration in the context of the presentation of national reports of matters

related to States parties' implementation of treaty body decisions on individual communications is inconsistent with the provisions of existing international treaties.

45. The Russian Federation is of the view that there must be deadlines for consideration of individual communications by the treaty bodies (for example, that such consideration take no more than two to three years). This would save both time during committee sessions and funds allotted for conference services. Moreover, setting deadlines for the consideration of communications would give the authors a clear idea of the outlook for consideration of their appeals in the relevant committees.

46. Guidelines should be drawn up for work on individual communications. Such a document ought to be developed jointly by States parties and the treaty bodies and should address only procedural matters related to handling such communications. The basic provisions on procedures for the consideration of individual communications contained in the relevant international treaties should undergo no changes.

General comments

47. The Russian Federation holds that it is necessary to institute a practice whereby general comments are prepared by the treaty bodies in close collaboration with the States parties and that the unique social, economic, political, religious and cultural features of particular States must be taken into consideration.

Composition of the treaty bodies and requirements for their experts

48. In order to comply with the principle of fair geographical representation of States in the composition of the treaty bodies, it would be advisable to establish regional quotas for membership in the various committees. The Russian Federation is of the view that specific parameters should be approved by conferences of the States parties to the relevant international treaties.

49. Requirements for the selection of candidates for membership in the treaty bodies and appointment and election mechanisms are enshrined in the relevant international treaties and fall exclusively within the competence of States parties. Changes to existing candidate selection and expert election procedures are possible only through appropriate amendments to the international treaties or additional instruments (optional protocols). Adoption of any new candidate selection criteria or mechanisms (such as advisory committees) through decisions, recommendations or guidelines adopted by the treaty bodies goes beyond their authority and is a breach of existing mandates.

50. There is a need for a set of measures designed to depoliticize the activity of the treaty bodies, make the experts more objective and ensure that they are truly independent, not only of States parties but also of other groups seeking to exert influence, including civil society institutions, the academic community and United Nations system entities. In that connection, it is important to draw up a set of ethical and professional standards of conduct and requirements for committee members (similar to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council) and also to establish an appropriate accountability mechanism should they fail to meet their obligations properly. The Russian Federation also favours term limits for treaty body members.

Collaboration with the special procedures of the Human Rights Council and regional and subregional organizations

51. Issues related to monitoring of States' implementation of recommendations from the special procedures of the Human Rights Council and regional and subregional organizations fall outside the competence of the treaty bodies. Committees may be granted that authority only through appropriate amendments to the international treaties or additional instruments (optional protocols) to that effect.

52. The special procedures and regional and subregional organizations are not authorized to monitor States parties' implementation of the concluding observations (recommendations) of the treaty bodies. The special procedures may be granted such additional functions only through modifications to their mandates.